

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cory Walker	Team: Team # 5	CCRB Case #: 200108292	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/04/2001 2:41 PM	Location of Incident: the intersection of 141st Street and Riverside Drive	Precinct: 30	18 Mo. SOL 6/4/2003	EO SOL 6/4/2003	
Date/Time CV Reported Wed, 12/05/2001 4:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/28/2001 7:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Eric Torres	30931	918416	030 Pct
2. POM John Potkay	16444	922987	Employee Mgmnt Div.

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Foster Gilkes	25184	915795	030 Pct
2. POM Thomas Tergeson	17371	916790	030 Pct
3. POM Luis Veras	16581	923316	030 Pct
4. POM Shawn Pelletier	16398	922951	030 Pct
5. SGT Vincent Carty	00498	900229	030 Pct
6. POF Marilyn Cruz	11026	915069	030 Pct
7. POM George Layng	06732	911985	030 Pct
8. SGT Amelia Loretoni	00791	884238	Admin. Services
9. POF Joanne Stroud	14934	921795	030 Pct
10. POM Wilder Sanchez	28753	894339	030 Pct
11. POM Thomas Woods	28521	923384	030 Pct

Officer(s)	Allegation	Investigator Recommendation
A.POM Eric Torres	Force: PO Eric Torres used his nightstick as a club against § 87(2)(b)	
B.POM Eric Torres	Force: PO Eric Torres used physical force against § 87(2)(b)	
C.POM John Potkay	Abuse: PO John Potkay refused to obtain medical treatment for § 87(2)(b)	
D.POM John Potkay	Force: PO John Potkay used physical force against § 87(2)(b)	
E.POM John Potkay	Discourtesy: PO John Potkay spoke discourteously to § 87(2)(b)	

Synopsis

[§ 87(2)(b)] complaint was filed with IAB on December 5, 2001 after [§ 87(2)(b)] of [§ 87(2)(b)] notified the 30th Pct that [§ 87(2)(b)] had complained that his injuries were the result of police using excessive force. His complaint was received by CCRB on December 28, 2001.]

Complainant [§ 87(2)(b)] alleges that on December 4, 2001 PO Eric Torres struck him with an inanimate object (allegation A) and used excessive physical force against him (allegation B). [§ 87(2)(b)] also alleges that another officer, PO John Potkay, refused to obtain medical treatment for him (allegation C), used excessive physical force against him (allegation D), and spoke to him in a discourteous manner (allegation E). [§ 87(2)(b)] was physically injured at the scene of his arrest. Specifically, he suffered a bilateral rupture of the patellar tendons in his knees. [§ 87(2)(b)] was arrested on this date and charged [§ 87(2)(a) 160.50]. [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)] [§ 87(2)(b)] civil suit against the City of New York is pending. [§ 87(2)(g)]

IAB's investigative case file was received by CCRB on April 23, 2003. IAB has recommended charges and specifications against PO Torres for use of excessive force [see encl.11]. Command discipline was recommended for PO Potkay for failure to provide medical attention [see encl. 1m].

Summary of Complaint

[§ 87(2)(b)] ***IAB statement: December 5, 2001 [see encl. 9a-d]***

[§ 87(2)(b), § 87(2)(g)] [§ 87(2)(b)] at the time of the incident, stated to IAB that PO Torres grabbed him by the shirt when he was first stopped. [§ 87(2)(b)] also did not mention PO Gilkes walking over and speaking with the unidentified Hispanic male who had tried to sell him drugs. He did not mention this individual pointing to the ground to indicate the bag of alleged narcotics that PO Gilkes picked up to show [§ 87(2)(b)]. [§ 87(2)(b)] stated that he "snatched" his arm away from PO Torres as he was trying to explain himself, at which point PO Torres struck him in the right knee area with what appeared to be a metal rod or stick, causing him to lose his balance and fall to the ground. [§ 87(2)(b)] also mentioned that after he was handcuffed, an officer placed his foot on his forehead and applied pressure. [§ 87(2)(b)] reiterated that officers attempted to stand him up after he was handcuffed, and that when he fell to the ground he was called a "liar."

[§ 87(2)(b), § 87(2)(g)] he stated that when he was protesting that he had not done anything wrong one officer remarked, "Yeah, that's why you wanted to run."

[§ 87(2)(b)] also stated that he was given crutches at [§ 87(2)(b)] but that these were taken away from him by police officers.

[§ 87(2)(b)] ***IAB statement: February 3, 2002 [see encl. 10a-b]***

IAB spoke with [§ 87(2)(b)] on this date to clarify his allegation that he had been dragged by an officer in the confines of the 30th Pct. [§ 87(2)(b)] stated that an officer dragged him stomach-side down from the front desk of the stationhouse to the stationhouse fingerprinting room – a distance of approximately 15 feet. [§ 87(2)(b)] stated this officer (later identified by IAB as PO Potkay) could be identified by a noticeable surgical scar on one of his knees. [§ 87(2)(b)] stated

that he had told PO Potkay, prior to being dragged, that he was in pain and that he was injured. PO Potkay then showed him the scar on his knee and told him he could not “run any bullshit on him because he [PO Potkay] had had real surgery.” PO Potkay told § 87(2)(b) he had “nothing but swelling” in his knees.

In his CCRB testimony, § 87(2)(b) stated that PO Potkay made this remark at § 87(2)(b). He also stated that PO Potkay dragged him from his holding cell to the fingerprinting room, not from the front desk to the fingerprinting room.

§ 87(2)(b) **IAB photo array: February 18, 2002 [see encl. 11a-b]**

IAB conducted a photo array on this date for the purpose of obtaining positive identifications of subject officers from § 87(2)(b). After viewing arrays, § 87(2)(b) positively identified PO Torres and PO Gilkes. § 87(2)(b) stated that PO Torres was the officer who had brought him to the ground and applied pressure to his knees. § 87(2)(b) stated that PO Torres applied pressure for approximately five minutes. § 87(2)(b) identified PO Gilkes as the officer who walked over and picked up the bag of alleged narcotics to show § 87(2)(b).

During the photo array, § 87(2)(b) also stated that one of these officers possibly put their foot on § 87(2)(b) head and also “jumped” on both of his legs when he complained about pain. § 87(2)(b) could not identify specifically which officer did this.

§ 87(2)(b) **CCRB statement: March 14, 2002 [see encl. 12a-g]**

§ 87(2)(b) stated that at approximately 2:45PM on December 4, 2001, he was Christmas shopping in the vicinity of 141st Street and Broadway in Manhattan. § 87(2)(b) was walking southbound on Broadway and stopped in a bodega on the northwest corner of this intersection. § 87(2)(b) purchased a soda and continued in the direction he was walking, intending to go to a men’s clothing store on the southwest corner of the intersection. As § 87(2)(b) began to cross 141st Street, a Hispanic male whom he did not know approached him. This individual walked closely alongside § 87(2)(b) and offered to sell him drugs. § 87(2)(b) told this individual that he was not interested in purchasing drugs and waved him away. The Hispanic male then pressed himself closer to § 87(2)(b) and stated, “Just walk.” As § 87(2)(b) was attempting to push the Hispanic male away, he saw a marked patrol car turning towards him from Broadway. The Hispanic male then walked away from § 87(2)(b) and returned to where he had been standing on the north side of 141st Street, approximately 100 feet west of the intersection of 141st Street and Broadway. Two uniformed police officers, identified by the investigator as PO Eric Torres and PO Foster Gilkes, exited the patrol car. PO Torres walked over to § 87(2)(b) and stood beside him while PO Gilkes walked over to the Hispanic male and spoke with him. § 87(2)(b) could not hear this conversation. § 87(2)(b) saw the Hispanic male point to the sidewalk. PO Gilkes walked over to where this individual was pointing and picked up a small bag that appeared to contain a narcotic substance. PO Gilkes called out to PO Torres to bring § 87(2)(b) over to where he was standing. As PO Torres began to walk § 87(2)(b) over, § 87(2)(b) stopped to tell PO Torres that he had not been involved in any drug transaction. PO Torres then drew his baton and struck § 87(2)(b) first in his right knee, then in his left, causing § 87(2)(b) to fall facedown in the street (allegation A). PO Torres then lowered himself onto § 87(2)(b) in such a way that PO Torres’ kneecaps were pressing down into the backs of § 87(2)(b) knees. PO Torres pressed his weight down, causing § 87(2)(b) extreme pain (allegation B). From this position, PO Torres began handcuffing § 87(2)(b). As he was doing so, § 87(2)(b) cried out in pain. PO Torres responded by pressing his knees harder into the backs of § 87(2)(b) knees. Several marked patrol cars arrived on the scene while § 87(2)(b) was being arrested. He stated that a crowd of civilians had also gathered.

§ 87(2)(b) **IAB photo array: April 29, 2002 [see encl. 14]**
§ 87(2)(b) was shown photo arrays of police officers on this date for the purpose of identifying the subject officer who reportedly dragged § 87(2)(b) approximately 15-20 feet from his holding cell to the 30th Pct fingerprinting room. § 87(2)(b) stated that he had been complaining to this officer that he could not walk. § 87(2)(b) stated that this officer showed him a surgical scar on one of his own knees. This officer informed § 87(2)(b) that there was nothing wrong with him. § 87(2)(b) stated that this same officer transported him from the 30th Pct to Manhattan Central Booking. Via the photo array, § 87(2)(b) was able to identify this officer as PO John Potkay.

§ 87(2)(b) **IAB statement: December 29, 2002 [see encl. 15a-b]**
IAB interviewed § 87(2)(b) on this date via telephone for the purpose of obtaining information regarding his medical treatment. In this interview, § 87(2)(b) stated that he did not recall informing EMTs of the facts and circumstances of his injury at the scene of his arrest. § 87(2)(b) stated that EMTs attempted to stand him up at the scene, at which point he fell back to the ground. He stated that EMTs never asked him about any physical interaction he had with the police.

§ 87(2)(b) also stated that he did not recall telling hospital personnel at § 87(2)(b) that he had had any physical interaction with police during his arrest. He stated that hospital personnel appeared to be listening mainly to PO Torres, who told them that there “was nothing wrong” with him.

§ 87(2)(b) stated that he did not recall mentioning the facts and circumstances of his arrest to the EMTs that transported him from Manhattan Criminal Court to § 87(2)(b). It was not until he was being treated at this hospital that he mentioned his physical interactions with police officers.

§ 87(2)(b) **IAB statement: January 21, 2003 [see encl. 16]**
IAB interviewed § 87(2)(b) via telephone on this date for the purpose of clarifying his statement. § 87(2)(b) was questioned about his statement during his photo array that PO Torres applied pressure to the backs of his knees for approximately five minutes. § 87(2)(b) stated that this was only an approximation and that, due to the severe pain he was experiencing, it only seemed like five minutes.

§ 87(2)(b) was also questioned about any injuries to his legs he may have sustained prior to the incident. § 87(2)(b) stated that he had no previous leg or knee injuries.

Results of Investigation

Witnesses

§ 87(2)(b) [see encl. 17]
§ 87(2)(b) was interviewed by IAB on December 5, 2001. § 87(2)(b) stated that when she interviewed § 87(2)(b) about his injuries, § 87(2)(b) told her that police officers hit him in the knees with a police baton and when he fell, the officers jumped on his legs. He explained that he had been treated and discharged from § 87(2)(b). His legs had been x-rayed at this facility. Finding no broken bones, they released him back into police custody. One of the officers told nurses at § 87(2)(b)

§ 87(2)(b) that there was nothing wrong with § 87(2)(b) knees. He also told § 87(2)(b) that he had been given crutches at § 87(2)(b), but they had been taken away so that he had to walk on his own. § 87(2)(b) told § 87(2)(b) that he had fallen three times since he sustained his injury.

§ 87(2)(b) [see encl. 18a-b]

§ 87(2)(b) of § 87(2)(b) was interviewed by IAB on December 5, 2001. § 87(2)(b) had treated § 87(2)(b) injuries prior to his interview. He stated that § 87(2)(b) patellar tendons, which were attached to his kneecaps, were “destroyed.” § 87(2)(b) stated that being struck on the knee was most likely not the cause of § 87(2)(b) injuries. He stated that what most likely caused the injuries was someone falling or positioning themselves on top of § 87(2)(b) causing his knees to “hyper flex.” § 87(2)(b) stated that § 87(2)(b) would have had to have been struck on the knees at exactly the right spot to cause such an injury and that his kneecaps would likely have been broken as well, which was not the case.

§ 87(2)(b) stated that patellar tendons are difficult to rupture, especially in a younger person, and that it requires that weight be put upon them for them to “hyper flex” or “extend” in such a way. He stated that the x-rays taken at § 87(2)(b) would have shown that § 87(2)(b) kneecaps were still in place, but that a partial rupture of the patellar tendons might have been visible. § 87(2)(b) stated that, as § 87(2)(b) had stated he had fallen several times since the x-rays, that his condition may have worsened over time, causing a complete rupture to occur.

He concluded that § 87(2)(b) injuries were unusual, as the ruptures occurred in both knees at the same time. § 87(2)(b) stated that most knee injuries only occur in one knee at a time.

§ 87(2)(b) [see encl. 19a-d]

Over the course of this investigation, it was found that an individual who had been standing in the crowd during § 87(2)(b) arrest, § 87(2)(b) had filed an independent CCRB complaint regarding her treatment by officers. In this case, CCRB #§ 87(2)(b), § 87(2)(b) made allegations against PO Marilyn Cruz and Sgt. Vincent Carty, who were present at the scene controlling the crowd that had gathered around § 87(2)(b). In her February 5, 2002 statement to Inv. Michael Dever, who was assigned to this case, § 87(2)(b) stated that she observed a marked patrol car cut sharply in front of her and she was walking at 141st Street. § 87(2)(b) turned left from Broadway onto 141st Street, following the patrol car. § 87(2)(b) stated that she saw a black male § 87(2)(b) lying on the ground screaming that his legs were broken. Several police officers were already at the scene. § 87(2)(b) stated to Inv. Dever that she was standing approximately 4-5 feet away from § 87(2)(b) laughing at § 87(2)(b) because she believed he was faking his injuries. § 87(2)(b) attempted to call her son’s grandmother on her cell phone so that she could hear § 87(2)(b) cries of pain. § 87(2)(b) observed that § 87(2)(b) phone rang while she was using her cell phone, and that officers asked her if she knew § 87(2)(b). She replied that she did not. At that point, police officers began to move the crowd away from § 87(2)(b). § 87(2)(b) told one officer (Sgt. Carty) that she had to cut through to go to Riverside Drive. § 87(2)(b) then began walking to Riverside Drive while officers were moving the crowd back towards Broadway. Sgt. Carty told her to move, at which point § 87(2)(b) got into an argument with Sgt. Carty. Sgt. Carty then instructed another officer (PO Cruz) to take § 87(2)(b) to the 030th Pct stationhouse. PO Cruz issued § 87(2)(b) a summons § 87(2)(b) at the 030th Pct stationhouse. § 87(2)(b) was not arrested.

§ 87(2)(b)

IAB statement: February 26, 2002 [see encl. 20]

On this date, § 87(2)(b) was found during a canvass by IAB. He provided IAB with a civilian witness statement in Spanish regarding the incident. § 87(2)(b) stated to IAB that he had observed police officers chase a male down the north side of 141st Street, between Riverside Drive and Broadway. The officers “took” this male to ground. One officer then placed his knees onto the back of the male’s knees, and then knelt on top of him for approximately ten minutes after the male had been handcuffed.

CCRB efforts to contact § 87(2)(b) § 87(2)(b)

On August 9, 2002, the CCRB investigator went to § 87(2)(b)’s reported residence, § 87(2)(b) § 87(2)(b) for the purpose of interviewing him. It was found that no individual by the name of § 87(2)(b) § 87(2)(b) is on record as having lived at the location. Further, the investigator found that this residence had been chained shut following what a resident of the building called a “raid by the cops” some months prior. Extensive BADS and DMV checks showed no individual by the name of § 87(2)(b) § 87(2)(b). The investigator conferred with IAB Det. Dennis regarding § 87(2)(b)’s whereabouts. Det. Dennis stated that § 87(2)(b) had “disappeared” and that he had issued a “wanted card” for this individual.

§ 87(2)(b) [see encl. 21a-c]

The ambulance call report documenting § 87(2)(b) transport to § 87(2)(b) identifies EMT § 87(2)(b) as being present in the transporting ambulance. EMT § 87(2)(b) was interviewed at CCRB on June 13, 2002. He stated that he had no recollection of this incident.

§ 87(2)(b) [see encl. 22]

EMT § 87(2)(b) transported § 87(2)(b) from Manhattan Criminal Court to § 87(2)(b). He was interviewed by IAB on January 7, 2003. EMT § 87(2)(b) stated that in transit to the hospital, § 87(2)(b) told him that police had hit him on the legs numerous times with clubs, causing injury to his knees. EMT § 87(2)(b) stated that § 87(2)(b) never mentioned that police sat on, leaned on, or jumped on his legs during his arrest. § 87(2)(b) told EMT § 87(2)(b) that the police had “tuned him up and fucked him up for no reason.”

Canvass

Inv. Walker and Inv. Leff canvassed the location of 141st Street and Broadway on March 15, 2002, the date of § 87(2)(b) CCRB interview in Paterson, New Jersey. The investigators located the bodega and men’s clothing store that § 87(2)(b) had mentioned in his testimony. A total of seven individuals inside both these locations were questioned regarding the incident. None of them could provide information regarding § 87(2)(b) arrest. Notably, when Inv. Walker and Inv. Leff parked their vehicle at the corner of Broadway and 141st Street, several males who were standing against a wall adjoining the corner bodega immediately left the vicinity.

Officers

PO Foster Gilkes

March 19, 2002 statement to Inv. Dever regarding CCRB #200107811 [see encl. 24a-b]

On this date, Inv. Dever questioned PO Gilkes of the 30th Pct as a witness regarding § 87(2)(b) complaint against Sgt. Carty and PO Cruz. PO Gilkes was questioned primarily about his observations of § 87(2)(b). He did mention, though, that at the time of § 87(2)(b)

interaction with officers, § 87(2)(b) was lying on the ground screaming that his legs were broken. Inv. Dever's interview transcription states that, after EMTs stated that § 87(2)(b) legs were in good condition, he "fell down on the sidewalk." Inv. Walker listened to the tape of Inv. Dever's interview with PO Gilkes. It was found that PO Gilkes stated to Inv. Dever that when EMS arrived at the scene, § 87(2)(b) was standing up. He stated that an EMT examined § 87(2)(b) legs and stated, "Your legs are in better condition than mine." PO Gilkes then stated that § 87(2)(b) then "fell back down" on the sidewalk. He added that it was at that point that the officers "figured his legs weren't broken."

June 6, 2002 statement to Inv. Walker regarding CCRB #200108292 [see encl. 25a-c]

PO Gilkes stated that he was the passenger of RMP1382. PO Torres was the operator. The officers were driving southbound on Broadway and then turned right onto 141st Street. At that point, PO Gilkes observed two male blacks engaged in a hand to hand transaction on the north sidewalk of the street. PO Gilkes later learned that one of these individuals was § 87(2)(b). PO Gilkes could not state specifically who was handing what to whom in this exchange. He stated that it appeared as if these two individuals did not see his RMP when it first turned onto 141st Street. PO Gilkes was the first officer to exit the RMP. When he did this, he heard a whistling sound, which he knew to be the sound made by individuals acting as "lookouts" for narcotics transactions. PO Gilkes then observed § 87(2)(b) walking westbound on 141st Street, going towards Riverside Drive. As § 87(2)(b) walked, PO Gilkes observed him throw a clear plastic bag containing a white substance behind a blue van. PO Gilkes walked over to this blue van, where he picked up the plastic bag. At that point, § 87(2)(b) was walking south across 141st Street and west towards Riverside Drive. PO Gilkes yelled to PO Torres to stop § 87(2)(b). PO Torres called out to § 87(2)(b) who turned around and began to walk back towards the officers. At that point, PO Gilkes held up the plastic bag he had recovered so that § 87(2)(b) could see it. § 87(2)(b) then turned and ran westbound on 141st Street. PO Torres ran after him. PO Gilkes ran back to his RMP and drove westbound, making a left onto Riverside Drive and stopping with the intention of cutting § 87(2)(b) off. However, PO Gilkes could not see PO Torres or § 87(2)(b) on 141st Street at that point, so he put the RMP in reverse and went back to 141st Street. PO Gilkes stopped the RMP and walked over to the south sidewalk of the street, where he saw § 87(2)(b) laying facedown in handcuffs. He stated that other police units began arriving on the scene at that point, in response to PO Torres' 10-85 call. An ambulance with two EMTs had also arrived at that point.

PO Gilkes recalled that § 87(2)(b) appeared to be "irritated" and was complaining loudly that his legs were broken. One of the EMTs then cut § 87(2)(b) pants legs off. The EMT stated to § 87(2)(b) "Your legs aren't in any worse condition than mine." § 87(2)(b) was then placed on a gurney, put into the ambulance, and transported to § 87(2)(b). PO Gilkes stated that he did not observe § 87(2)(b) being stood up in an attempt to make him walk by any officer or EMT. PO Torres traveled in the ambulance with § 87(2)(b) to the hospital. PO Gilkes followed in his RMP.

PO Gilkes described § 87(2)(b) demeanor at § 87(2)(b) as "cool, calm, and collected." He stated that he was able to obtain § 87(2)(b) pedigree information and that he was not making any specific complaints of physical injury. PO Gilkes did not stay long at § 87(2)(b) as he was advised by his supervisors to obtain pedigree information and return immediately to the 030 Pct stationhouse, so that he would not incur any overtime on his tour. PO Torres stayed behind with § 87(2)(b).

Upon questioning, PO Gilkes stated that the other black male he had observed in the hand to hand transaction had "mingled into the crowd" and "disappeared." PO Gilkes stated that he did not

observe how § 87(2)(b) had been taken to the ground. He stated that he did not observe any physical injuries to § 87(2)(b) at the scene. PO Torres had told him that he had been chasing § 87(2)(b) and that suddenly § 87(2)(b) legs buckled, at which point he fell to the ground. PO Gilkes stated that § 87(2)(b) had a “20 yard jump” on PO Torres, and that his fall was the only thing that allowed PO Torres to catch up with him.

PO Gilkes denied that he or PO Torres were carrying nightsticks or batons with them. He denied that § 87(2)(b) was struck with a nightstick or any other object by any officer. He stated that § 87(2)(b) did not attempt to provide an explanation of what had transpired regarding the hand to hand exchange. PO Gilkes at no time observed PO Torres lying on top of § 87(2)(b) or placing his knees onto § 87(2)(b). PO Gilkes did not learn that § 87(2)(b) was injured from any officer. He did not know if § 87(2)(b) had received medical treatment from another hospital. PO Gilkes reiterated that no officer attempted to stand § 87(2)(b) up or make him walk at the scene or at § 87(2)(b). He denied that any discourteous language or action was used against § 87(2)(b).

IAB statement: November 11, 2002 [see encl. 27a-d]

§ 87(2)(g) PO Gilkes had listened to the tape of his CCRB interview prior to his IAB hearing. PO Gilkes was questioned as to whether or not PO Torres was carrying an asp baton on the date in question. PO Gilkes replied that he was familiar with asp batons but did not know PO Torres to carry one. PO Gilkes also stated that he did not hear § 87(2)(b) complain of being in any pain until EMS arrived on the scene. PO Gilkes reiterated that, as § 87(2)(b) was complaining that his legs were broken, no attempts were made to raise him to his feet at the scene.

PO Eric Torres

April 23, 2002 statement to Inv. Dever regarding CCRB #200107811 [see encl. 29a-b]

PO Torres of the 30th Pct was questioned as a witness by Inv. Dever regarding § 87(2)(b) complaint. Inv. Walker listened to the tape of Inv. Dever’s interview with PO Torres. PO Torres stated only that he had chased § 87(2)(b) down 141st Street and that § 87(2)(b) was lying on the ground claiming an injury. He stated that he then escorted § 87(2)(b) to the § 87(2)(b) hospital.

June 6, 2002 statement to Inv. Walker regarding CCRB #200107811 [see encl. 30a-c]

PO Torres confirmed that PO Gilkes made the observation of a hand to hand transaction between § 87(2)(b) and an unidentified black male. PO Torres confirmed that PO Gilkes exited their patrol car first and walked over to where the two individuals had been standing on the north sidewalk of 141st Street. PO Torres called § 87(2)(b) over to him. PO Gilkes then held up a clear plastic bag containing a white substance. PO Torres clarified that he did not actually see the bag that his partner held up. At that point, § 87(2)(b) turned and ran west towards Riverside Drive. PO Torres then called a 10-85 and pursued § 87(2)(b) on foot. As § 87(2)(b) was running on the south sidewalk of 141st Street, he fell to the ground. PO Torres stated that § 87(2)(b) fell approximately 25 feet away from Riverside Drive. PO Torres immediately told § 87(2)(b) to place his hands behind his back, which § 87(2)(b) did of his own accord. PO Torres then rear cuffed § 87(2)(b). He stated that at no point did he place any part of his body on § 87(2)(b) body. PO Torres stated that he was kneeling on one knee beside § 87(2)(b) while he handcuffed him. He then added that when § 87(2)(b) fell, he fell onto his back and was lying on his back when PO Torres caught up to him. § 87(2)(b) had to be turned over to be handcuffed. PO Torres stated that § 87(2)(b) claimed that his legs were broken.

By the time § 87(2)(b) was handcuffed, 4-5 marked patrol units and an ambulance had arrived on the scene. § 87(2)(b) was removed from the scene by EMTs, who placed him on a stretcher. PO Torres stated that at no time was § 87(2)(b) made to stand up or made to walk. PO Torres traveled in the ambulance with § 87(2)(b) to § 87(2)(b). PO Torres stated that § 87(2)(b) continued to complain of pain to his legs, and that he could see scrapes on § 87(2)(b) knees (EMTs had removed his pants legs).

PO Torres stated that § 87(2)(b) was wheeled on the stretcher into the hospital, and that he was not made to walk into the hospital. PO Torres did not know what § 87(2)(b) was treated for or what he was diagnosed with. PO Torres stated that by the time § 87(2)(b) was actually examined, he had been relieved from tour by PO Tergeson, who arrived at the hospital by himself. PO Torres had been at the hospital approximately 30 minutes at that point. When PO Tergeson arrived, PO Torres returned to the 030th Pct stationhouse to sign out. PO Torres stated that he has had no interaction with § 87(2)(b) since this date.

PO Torres stated he was unaware of what happened to the second black male PO Gilkes had observed in a hand to hand exchange with § 87(2)(b).

PO Torres stated that he had left his nightstick in his RMP, as he saw no reason to carry it. He denied that he or any officer struck § 87(2)(b) in the knees or legs with a nightstick or other inanimate object.

PO Torres stated that he did not specifically know what caused § 87(2)(b) to fall. He stated that West 141st Street slopes downwards towards Riverside Drive and that this incline possibly caused § 87(2)(b) to lose his balance. He added that he saw § 87(2)(b) ankles twist slightly before he fell. PO Torres denied that he ever placed pressure on § 87(2)(b) knees or on any other part of his body. He denied that he or any other officer dragged § 87(2)(b) or used profanity towards him.

PO Torres did not know if § 87(2)(b) had received additional medical treatment after his arrest.

IAB statement: November 19, 2002 [see encl. 32a-d]

§ 87(2)(g) PO Torres stated that when § 87(2)(b) fell during the pursuit, he fell face forward. PO Torres stated he § 87(2)(b) then rolled over onto his back of his own accord as PO Torres approached him. PO Torres stated he then had to roll § 87(2)(b) back onto his stomach so that he could handcuff him (*PO Torres stated to CCRB that § 87(2)(b) had fallen onto his back during the pursuit and was on his back when he caught up to him*). PO Torres stated that § 87(2)(b) immediately began complaining of pain to his legs. PO Torres reiterated that he at no time placed any part of his body on § 87(2)(b) knees, or that he used any physical force against § 87(2)(b).

PO Torres also stated that the EMTs who arrived on the scene attempted to bring § 87(2)(b) to his feet. PO Torres denied that he had attempted to bring § 87(2)(b) to his feet (*PO Torres stated to CCRB that at no time was § 87(2)(b) made to stand or walk at the scene*).

PO Torres denied that he was carrying an asp baton on the date in question, and stated that he was not familiar with what an asp baton is. PO Torres stated that he had left his nightstick in his RMP prior to exiting it.

PO Torres had listed to the tape of his CCRB interview prior to this IAB interview.

PO Thomas Tergeson [see encl. 34a-b]

PO Tergeson of the 30th Pct was interviewed by Inv. Walker on July 22, 2002. He stated that he had no recollection of any interaction with a prisoner as described to him. PO Tergeson could not recall interacting with any prisoner on this date who could not walk or claimed he could not walk. He denied that he dragged any such prisoner. He also denied that he had any conversation with a prisoner about a sports injury he had sustained to his right leg and denied that he had ever sustained such an injury. PO Tergeson had no recollection of transporting any prisoner from § 87(2)(b) to the 030th Pct stationhouse. PO Tergeson's memo book confirms that he was present at § 87(2)(b) at 4:10pm to relieve PO Torres. PO Tergeson did not have his memo book with him when he was questioned by Inv. Walker.

PO Shawn Pelletier and PO Luis Veras [see encl. 36a-b and 38a-b]

Both 30th Pct officers were interviewed on October 23, 2002. They were assigned to RMP 1806 on the date in question. Their unit responded to PO Torres' 10-85 from the location. Both officers testified that there were already marked units on the scene when they arrived.

PO Pelletier stated that § 87(2)(b) had already been handcuffed when he first arrived. He stated he did not know who had handcuffed the complainant. PO Pelletier stated that § 87(2)(b) was screaming that his legs had been injured in some way. An ambulance was called, and PO Pelletier recalled officers instructing § 87(2)(b) to stay still. § 87(2)(b) continued to yell.

An ambulance arrived approximately 6-7 minutes after PO Pelletier and PO Veras arrived. Both officers stated that EMTs picked § 87(2)(b) up and put him on a stretcher and that no one present attempted to make § 87(2)(b) stand or walk. PO Pelletier stated he recalled seeing § 87(2)(b) sitting at some point.

§ 87(2)(g). PO Veras did state that when he first arrived on the scene, PO Torres was on the ground to the side of § 87(2)(b) handcuffing him. PO Veras stated he did not witness any struggle taking place between the individuals. PO Veras recalled also that a female individual from the crowd was engaged in a verbal dispute with Sgt. Carty, and that this individual had been issued a summons § 87(2)(b) by either Sgt. Carty or his partner, PO Cruz.

Sgt. Vincent Carty

February 20, 2002 statement to Inv. Dever regarding CCRB #200107811 [see encl. 40a-b] In his statement to Inv. Dever on this date, Sgt. Carty of the 30th Pct stated only that he saw § 87(2)(b) lying facedown on the ground in handcuffs. He also stated that when he arrested § 87(2)(b) he handed her to PO Gilkes, who placed handcuffs on her and took her to PO Cruz to be transported to the 030th Pct stationhouse.

IAB statement: March 7, 2002 [see encl. 41a-c]

§ 87(2)(g).

October 30, 2002 statement to Inv. Walker regarding CCRB #200108292 [see encl. 42a-b]

Sgt. Carty was partnered with PO Cruz on the date in question. Sgt. Carty stated that when he arrived, § 87(2)(b) had already been handcuffed and was laying facedown on the ground. Approximately 10 uniformed officers had already arrived at the scene. He did not observe how § 87(2)(b) was apprehended and he did not witness any struggle between § 87(2)(b) and any

officer. Sgt. Carty stated that it was his impression that § 87(2)(b) was trying to get the crowd that had gathered “riled up” by screaming in pain. Sgt. Carty recalled that an ambulance arrived on the scene and that when EMTs looked at § 87(2)(b) legs, one of them (a white male) stated, “Your legs are in better shape than mine.” Sgt. Carty did not see how § 87(2)(b) was placed in the ambulance, or if he was stood up to walk. Sgt. Carty stated that, by that point, his attention was drawn to the crowd that had gathered. He stated that he asked one female Hispanic, § 87(2)(b) repeatedly to move away from the scene of arrest. When she refused to comply, Sgt. Carty instructed PO Cruz to transport § 87(2)(b) to the 030th Pct to issue her a summons for § 87(2)(b). Sgt. Carty remained at the scene. Sgt. Carty stated that he did not witness any of the allegations against officers take place while he was present at the scene.

PO Marilyn Cruz

February 13, 2002 statement to Inv. Dever regarding CCRB #200107811 [see encl. 44a-c]
Regarding § 87(2)(b) PO Cruz (30th Pct) stated to Inv. Dever only that when she first arrived at the scene, officers were handcuffing a civilian at the scene. PO Cruz did not recall anything else regarding the actions of § 87(2)(b) or the actions of officers towards § 87(2)(b). PO Cruz stated her attention was focused mainly on the crowd that had gathered. PO Cruz confirmed that § 87(2)(b) was handed over to her by PO Gilkes and that she transported § 87(2)(b) to the 030th Pct stationhouse.

October 30, 2002 statement to Inv. Walker regarding CCRB #200108292 [see encl. 45a-b]
PO Cruz stated that when she first arrived on the scene, § 87(2)(b) had already been handcuffed and that EMS had already arrived. PO Cruz was not very forthcoming during her interview about the incident, stating only that she was concentrating on crowd control and that she did leave the scene with § 87(2)(b) in custody, for the purpose of issuing her a summons. PO Cruz denied witnessing any of the allegations against officers taking place while she was present at the scene.

PO Joanne Stroud, PO George Layng [see encl. 47a-b, 48a-b and 50a-b]

These officers, both assigned to the 30th Pct, were also interviewed regarding both CCRB #200108292 and #200107811. § 87(2)(g)

§ 87(2)(b) All three officers denied witnessing any of the allegations stemming from § 87(2)(b) complaint take place.

Sgt. Amelia Loretoni

IAB interview: March 5, 2002 [see encl. 52a-c]

§ 87(2)(g). Sgt. Loretoni added that she observed EMS lift § 87(2)(b) to a standing position, but being unable to stand on his own, he “lowered” himself back to the ground, landing on his knees. Officers then helped him lack back down on the ground. EMS then lifted § 87(2)(b) onto a gurney and cut his pants legs off. Sgt. Loretoni stated that EMS viewed § 87(2)(b) legs and stated they appeared to be fine. Sgt. Loretoni also denied seeing any officer in possession of a metal asp baton at the scene.

April 11, 2002 statement to Inv. Dever regarding CCRB #200107811 [see encl. 53a-b]

Sgt. Loretoni stated she arrived at the scene at § 87(2)(b) was being placed in an ambulance. She was not questioned any further about § 87(2)(b) arrest by Inv. Dever, § 87(2)(g)

December 6, 2002 statement to Inv. Walker regarding CCRB #200108292 [see encl. 54a-b]

Sgt. Loretoni reiterated that she arrived on the scene as § 87(2)(b) was being placed in an ambulance. She denied observing any of the reported allegations take place. She was unaware of how § 87(2)(b) came to be injured.

PO Wilder Sanchez

PO Sanchez of the 30th Pct was interviewed by CCRB on January 14, 2003. On the date of incident, he was working as Sgt. McCormick's operator in rental auto #§ 87(2)(b). PO Sanchez stated that § 87(2)(b) was already handcuffed and laying facedown when he arrived at the scene. § 87(2)(b) was complaining loudly that his legs were broken. Another officer told PO Sanchez that § 87(2)(b) had been running and fell, and that he must have hurt himself when he fell. PO Sanchez was able to observe a scrape on § 87(2)(b) knee when EMS removed § 87(2)(b) pants legs. PO Sanchez denied that § 87(2)(b) was made to stand at the scene. PO Sanchez left the scene when EMS left the scene. PO Sanchez denied that he observed any of the misconduct reported in the allegations.

PO John Potkay

IAB statement: November 20, 2002 [see encl. 58a-c]

PO Potkay was assigned to the 30th Pct on the date of incident. He is currently assigned to the NYPD Administrative Services Division. § 87(2)(g)

§ 87(2)(b). PO Potkay stated that § 87(2)(b) sat himself down on the floor of a 30th Pct stationhouse holding cell. He had stated to CCRB that he could not recall if § 87(2)(b) was placed in the holding cell standing unassisted, or if he was helped into a sitting position. PO Potkay also stated that, when he was being taken out of the holding cell to be fingerprinted, § 87(2)(b) took five or six steps unassisted, traveling approximately 6-7 feet before falling to the ground. PO Potkay stated to CCRB that he was supporting § 87(2)(b) on one side with his own body when he took § 87(2)(b) out of the holding cell.

PO Potkay also stated that § 87(2)(b) at one point requested that he be dragged to the fingerprinting room after falling. PO Potkay stated that he told § 87(2)(b) he would not drag him. PO Potkay stated that he did not drag § 87(2)(b) at any point. PO Potkay did state that when he attempted to pull § 87(2)(b) to his feet after he had fallen, he may have pulled § 87(2)(b) approximately 8 feet along the floor (four feet after each of two falls by § 87(2)(b) as a result of unsuccessful efforts to assist him in standing upright. PO Potkay stated to IAB that the distance from the 30th Pct cell area and the fingerprinting room is approximately 15-20 feet. PO Potkay stated that after two unsuccessful attempts at getting § 87(2)(b) to stand, he placed § 87(2)(b) in a rolling office chair and wheeled him into the fingerprinting room.

PO Potkay confirmed that he did show § 87(2)(b) a scar on his left knee and did compare a knee injury he had had to § 87(2)(b) current injury. PO Potkay reiterated that he mentioned this while in the process of telling § 87(2)(b) that he should place his weight on one leg to make walking easier. PO Potkay denied that he made any discourteous or disparaging remarks about § 87(2)(b) injuries not being serious or about him lying about his injuries.

CCRB statement: January 21, 2003 [see encl. 59a-c]

PO Potkay stated that he arrived at § 87(2)(b) with PO Woods to pick up § 87(2)(b) as well as PO Tergeson, who had been waiting with him in the hospital. When PO Potkay arrived at § 87(2)(b) § 87(2)(b) doctor was present. § 87(2)(b) was lying on a hospital bed. § 87(2)(b) was released to go. He was given crutches to use. PO Potkay stated that § 87(2)(b) was able to get up to a standing position, leaning on his crutches. However, he

quickly fell down on the floor. At that point, § 87(2)(b) doctor handed PO Potkay § 87(2)(b) release form. PO Potkay stated he was not given any restrictions on § 87(2)(b) by the doctor - meaning that he was not told that § 87(2)(b) could not walk or that he had any other injury which would require that the officers take special precautions. PO Potkay stated that he was under the impression that only one of § 87(2)(b) legs was hurt and expected that he would be able to walk upright on crutches. PO Potkay was told by medical personnel only that § 87(2)(b) had “swelling in his knee.” PO Potkay added that, when § 87(2)(b) first fell to the floor in the hospital, § 87(2)(b) doctor “rolled his eyes” in a somewhat exasperated manner and stated, “He’s released.”

After § 87(2)(b) first fell, PO Potkay and PO Woods picked him up from the floor and carried him to the van. PO Potkay stated that he and PO Woods each supported § 87(2)(b) under his shoulders. PO Tergeson carried § 87(2)(b) crutches. PO Potkay stated that § 87(2)(b) did not fall again in the hospital after he was first picked up from the hospital floor. PO Potkay stated that at certain points § 87(2)(b) was able to walk with him on the way to the police van, but that his legs would then quickly give way. § 87(2)(b) continued to complain of pain in his legs after he was released from the hospital. In an attempt to console § 87(2)(b) PO Potkay told § 87(2)(b) that he had had a similar knee injury and showed him his scar. PO Potkay then told § 87(2)(b) that if he put his weight on his good leg, that he would have an easier time walking. PO Potkay denied that he or any officer spoke to him discourteously or accused him of lying about his injuries.

PO Potkay transported § 87(2)(b) to the 30th Pct from § 87(2)(b). PO Potkay could not specifically recall what § 87(2)(b) was saying in the van during transport, if anything. PO Potkay stated he was possibly complaining of pain to his legs. He stated that § 87(2)(b) was able to sit in a normal position in the back of the van during transport.

At the 30th Pct stationhouse, PO Potkay and PO Woods took § 87(2)(b) out of the van, again supporting him beneath his shoulders. They took § 87(2)(b) in through the side door of the stationhouse and took § 87(2)(b) to the first holding cell, close to the front entrance of the stationhouse. As there were no benches in the cell, § 87(2)(b) was sat down on the floor. PO Potkay stated that § 87(2)(b) was placed on the floor and stated he did not remember if § 87(2)(b) was put in the cell standing unassisted, which might have caused him to fall to the ground.

PO Potkay did not recall § 87(2)(b) yelling or screaming in pain from his holding cell. PO Potkay denied that § 87(2)(b) ever asked him for medical attention. PO Potkay stated that he repeatedly asked § 87(2)(b) from outside the holding cell, “Are you all right?” as § 87(2)(b) appeared to be in pain. PO Potkay stated that § 87(2)(b) reply to this each time was “No, just help me out.”

PO Potkay took § 87(2)(b) out of his cell to be fingerprinted. The fingerprinting room of the 30th Pct stationhouse is approximately 30 feet away from § 87(2)(b) cell. PO Potkay came to § 87(2)(b) and explained that he would need to be fingerprinted and asked if he would be all right to go to the fingerprinting room. § 87(2)(b) replied, “Yeah, just help me out.” PO Potkay then opened the cell and began to take § 87(2)(b) out. PO Potkay was supporting § 87(2)(b) from one side by and put his arm over § 87(2)(b) shoulder. After walking with § 87(2)(b) for approximately 7 feet, § 87(2)(b) fell to the floor of the stationhouse. PO Potkay then asked him, “What’s going on?” § 87(2)(b) replied, “No, no. Just help me out, give me a hand.” PO Potkay then helped § 87(2)(b) up again, at which point § 87(2)(b) allowed his legs to go limp, causing both he and PO Potkay to fall to the ground. PO Potkay tried again to help § 87(2)(b).

§ 87(2)(b) up. Both individuals fell again. PO Potkay then took an office chair from inside the fingerprinting room and put § 87(2)(b) in this chair. PO Potkay rolled § 87(2)(b) in to be fingerprinted. PO Potkay denied that he dragged § 87(2)(b) in to the fingerprinting room.

PO Potkay recalled telling § 87(2)(b) during the fingerprinting, “Look, I’m assigned to you for now. Do you want to go back to the hospital or do you want to go to MCB [Manhattan Central Booking]?” § 87(2)(b) again stated, “No, just help me out. I want to get this over with.” § 87(2)(b) asked PO Potkay what he thought “he would get” in terms of a sentence for his arrest. PO Potkay told him that he might just get probation. After fingerprinting him, PO Potkay rolled § 87(2)(b) back into his cell and placed him on the floor of the cell. PO Potkay stated that he could not recall if § 87(2)(b) was being loud or was complaining of his injuries.

PO Potkay stated that § 87(2)(b) was transported to Manhattan Central Booking without incident. PO Woods was assisting PO Potkay in the transport of § 87(2)(b). Both officers carried § 87(2)(b) upstairs at Manhattan Central Booking and logged him in with a female Corrections officer. This officer asked § 87(2)(b) if he needed medical attention. § 87(2)(b) told this Corrections officer that he did not need medical attention. § 87(2)(b) was then turned over to Dept. of Corrections personnel. PO Potkay stated that § 87(2)(b) last words to him when he was leaving Central Booking were, “Thanks a lot you guys, you’ve been a lot of help.”

PO Potkay guessed that he had asked § 87(2)(b) “dozens” of times if he needed to go back to the hospital. Each time § 87(2)(b) stated that he did not and asked PO Potkay to “just help me out.” He denied ever dragging § 87(2)(b) at any point. PO Potkay also denied cursing at, or reprimanding § 87(2)(b) for falling to the ground.

PO Thomas Woods

PO Woods of the 30th Pct was interviewed by CCRB on April 1, 2003. PO Woods stated that on this date he was assigned to transport two male prisoners from the 30th Pct stationhouse to Manhattan Central Booking. PO Woods was instructed that one of the prisoners may need assistance walking. PO Woods confirmed that he transported § 87(2)(b) to Manhattan Central Booking. He could not specifically recall if § 87(2)(b) needed assistance walking when he was being taken from his holding cell to the transporting van. PO Woods stated that at Manhattan Central Booking, § 87(2)(b) did require assistance walking, and that he and PO Potkay supported him underneath his shoulders to take him to the intake desk. PO Woods could not recall if § 87(2)(b) made any statements about his legs being injured or how this injury came about. PO Woods did recall that § 87(2)(b) thanked he and PO Potkay at Manhattan Central Booking for “helping him out” by assisting him to walk. PO Woods recalled that he asked § 87(2)(b) several times if he needed to be taken to the hospital and that § 87(2)(b) each time replied, “No, just help me out.” PO Woods explained that it was not his desire to appear at Manhattan Central Booking with an injured prisoner, which would require he and PO Potkay to take the prisoner to get medical treatment and then return to Manhattan Central Booking with the prisoner. PO Woods could not recall if he was present at § 87(2)(b) on the date in question. PO Woods denied that § 87(2)(b) was ever dragged or that he made any discourteous or disparaging remarks about § 87(2)(b) injuries.

Medical records

§ 87(2)(b) [see encl. 62a-m]

Records obtained from this hospital note 2cm bilateral epidermal abrasions (i.e. scrapes) underneath § 87(2)(b) knees, as well as tenderness to his knees and calves. § 87(2)(b)

stated to hospital personnel that he was struck in the back of his legs and that he subsequently fell forward onto both knees. § 87(2)(b) knees were x-rayed, with negative results for bone breakage. § 87(2)(b) was instructed to take Motrin once every six hours for pain, and instructed that if his knees get red, swell, or have yellow discharge, to see a doctor. He was treated on § 87(2)(b).

Pre-arraignment screening forms [see encl. 63]

On August 13, 2002, the investigator received notification from § 87(2)(b) at HHC Corrections Health Services that no Department of Corrections pre-arraignment screening forms for § 87(2)(b) which would have documented § 87(2)(b) physical condition at the time he was presented at Manhattan Central Booking, could not be located.

§ 87(2)(b) [see encl. 64a-jj]

On § 87(2)(b) § 87(2)(b), § 87(2)(b) was treated at the above hospital. Hospital records show that § 87(2)(b) was diagnosed with a complete rupture of his left and right patellar tendons. On § 87(2)(b), § 87(2)(b) underwent surgery at this hospital to repair his tendons. Pain to § 87(2)(b) right ankle is also noted. A tear of the medial and lateral capsules of § 87(2)(b) knees is also noted. § 87(2)(b) knees were placed in braces and he was given crutches.

New York City Medical Examiner's Office consultation [see encl. 65]

On July 18, 2002, CCRB case file materials were presented to the Office of the Chief Medical Examiner of New York for medical analysis. These materials included the above medical records, IAB and CCRB complaint reports, CCRB photographs of § 87(2)(b) injuries, § 87(2)(b) arrest report, summaries of the Inv. Walkers' CCRB interviews of § 87(2)(b) PO Gilkes, PO Torres, and EMT § 87(2)(b) and § 87(2)(b) 50(h) hearing transcript. On July 24, 2002, First Deputy Chief Medical Examiner Mark Flomenbaum responded that "The nature of the medical condition (bilateral patellar tendon ruptures) seems inconsistent with having occurred as a result of either scenario [i.e. the statement of § 87(2)(b) versus the statements of PO Torres and PO Gilkes]." § 87(2)(b) recommended that CCRB seek the opinion of medical experts in the field of knee trauma. The investigator then consulted with two orthopedists, § 87(2)(b) of § 87(2)(b), and § 87(2)(b) at the § 87(2)(b). Both doctors declined to provide opinions regarding the nature of § 87(2)(b) injuries.

§ 87(2)(b) records and § 87(2)(b) records of § 87(2)(b) physical therapy [see encl. 66a-I and encl. 67a-r]

These records document the ongoing medical treatment of § 87(2)(b) injuries, which are documented extensively in the medical records from § 87(2)(b) [see encl. 64a-jj]. There is no additional information in these records regarding the manner in which § 87(2)(b) stated he received his injuries, or any leg or knee injuries § 87(2)(b) might have sustained prior to the incident.

Communications [see encl. 68a-g]

Police communications records were obtained for the place and time of incident and are summarized as follows.

At 2:31PM, an officer whose voice sounds like PO Torres' calls a 10-85 for officer assistance. The officer sounds out of breath, as if he is running or exerting himself in some way. The location he gives is the intersection of 141st Street and Broadway.

At 2:32PM, an officer identifying himself as a sergeant responds and informs Central Communications that five police units are already on the scene and that no more are needed. Central Communications then advises a "slowdown" for responding officers. An unintelligible voice then responds. Moaning or crying from a seemingly female voice can be heard in the background.

At 2:33PM, a female sergeant advises that everything is under control and that no further units are needed at the scene. There is a great deal of background noise, possibly from individuals gathered at the scene, at this point.

The Sprint printout shows that § 87(2)(b) was removed to § 87(2)(b) at § 87(2)(b)

Criminal Case

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer CCRB history

No previous CCRB complaints were located involving either PO Torres or PO Potkay [see encl.3 and 4].

Civil Case [see encl. 80a-b]

§ 87(2)(b) civil case § 87(2)(b) is being handled by attorney § 87(2)(b) of the firm § 87(2)(b). According to § 87(2)(b) notice of claim, he is suing the City of New York for \$100,000,000.00.

IAB

IAB's investigative case file was received by CCRB on April 23, 2003. IAB has recommended charges and specifications against PO Torres for use of excessive force [see encl. 11]. Command discipline was recommended for PO Potkay for failure to provide medical attention [see encl. 1m].

Conclusions and Recommendations

Subject officer identification

§ 87(2)(b) positively identified PO Torres, PO Gilkes, and PO Potkay via IAB photo arrays [see encl. 11a-b and encl. 14].

Established facts

§ 87(2)(b) was stopped on December 4, 2001 after being observed in a possible hand to hand exchange by PO Gilkes. After exiting his RMP and ordering § 87(2)(b) to stop, PO Gilkes recovered a bag of alleged narcotics on or near the northern sidewalk of West 141st Street. PO Torres stood by § 87(2)(b). PO Gilkes held up the alleged narcotics to show § 87(2)(b) and PO Torres. § 87(2)(b) was arrested and charged § 87(2)(a) 160.50
§ 87(2)(b)

§ 87(2)(b) was taken from the scene in an ambulance. He was transported by ambulance to § 87(2)(b). Both PO Gilkes and PO Torres were present at this hospital with § 87(2)(b). PO Gilkes left after obtaining § 87(2)(b) pedigree information. PO Torres stayed at the hospital with § 87(2)(b) and was then relieved by PO Tergeson. PO Potkay later arrived with PO Woods to pick up PO Tergeson and to transport § 87(2)(b) to the 30th Pct stationhouse for arrest processing. § 87(2)(b) was released from § 87(2)(b) after his legs were x-rayed. § 87(2)(b) had complained that his legs were broken). As no bone breakage was found, § 87(2)(b) was released back into police custody.

While in police custody, § 87(2)(b) had difficulty walking and complained of this to PO Potkay, who was assigned to process his arrest. PO Potkay had difficulty with § 87(2)(b) during arrest processing, and several times had to support him to help him walk. PO Potkay at one point showed § 87(2)(b) a scar on his left knee during a conversation about § 87(2)(b) injuries. § 87(2)(b) fell on at least two occasions in the 30th Pct stationhouse while attempting to walk from his holding cell to the stationhouse fingerprinting room.

§ 87(2)(b) was transported from the 30th Pct stationhouse to Manhattan Central Booking by PO Potkay and PO Woods. Both officers had to support § 87(2)(b) to help him to walk to the front desk of Manhattan Central Booking. § 87(2)(b) was accepted into custody at Manhattan Central Booking by a Department of Corrections officer and placed in a holding cell. § 87(2)(b) appeared in Manhattan Criminal Court and was released on his own recognizance. When it was explained that § 87(2)(b) was unable to walk, the court called an ambulance for him. § 87(2)(b) was then transported to § 87(2)(b), where it was found that he had suffered a bilateral rupture of his patellar tendons, which are located below the knee and are attached to the kneecaps.

Facts in dispute

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Credibility

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(g) § 87(2)(b) testified that, after PO Gilkes recovered alleged narcotics at the scene, he stood by and tried to explain himself to the officers. He stated that, while in the middle of this explanation, PO Torres struck him first in his right, and then his left knee, causing him to fall to the ground.

PO Torres and PO Gilkes testified that § 87(2)(b) was at first cooperative, but when PO Gilkes recovered the alleged narcotics and showed them to § 87(2)(b), § 87(2)(b) started running westbound on 141st Street, going towards Riverside Drive. PO Torres testified that § 87(2)(b) fell to the ground close to the southeastern corner of the intersection of 141st Street and Riverside Drive. § 87(2)(g) § 87(2)(b) responding officers testified that § 87(2)(b) was lying on the ground at this location when they arrived at the scene. § 87(2)(b) himself testified that he was standing approximately 100 feet west of the intersection of Broadway and 141st Street, or roughly in the middle of the block, when PO Gilkes held up the bag of alleged narcotics. By § 87(2)(b) account, he would have also been brought to the ground by PO Torres at this same location. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

According to the IAB statement of § 87(2)(b), who treated § 87(2)(b) injuries at § 87(2)(b), for § 87(2)(b) patellar tendons to rupture bilaterally as a result of being struck by a baton, PO Torres would have had to hit § 87(2)(b) in exactly the right place on both knees. § 87(2)(b) also stated that the force of these blows would have caused breakage in § 87(2)(b) kneecaps. However, both § 87(2)(b) kneecaps were intact at the time of his treatment.

§ 87(2)(b) also stated that PO Torres, after taking § 87(2)(b) to the ground, lowered himself onto § 87(2)(b) in such a way that PO Torres' kneecaps were pressing down into the backs of § 87(2)(b) knees. § 87(2)(b) stated that PO Torres, while handcuffing him, forcefully pressed his knees into the backs of § 87(2)(b) knees, causing him pain. An independent witness who was interviewed by IAB, § 87(2)(b) testified that he observed an officer kneeling on the backs of § 87(2)(b) knees after he was handcuffed [see encl. 20].

§ 87(2)(b) stated to IAB that for an injury as unusual as a bilateral rupture of the patellar tendons to occur, enough weight must be placed on the knees to cause the patellar tendons to "hyper flex" and rupture. § 87(2)(b) stated that patellar tendons are difficult to rupture and that such an injury is not common in younger individuals. He also added that most knee injuries occur in only one knee at a time. § 87(2)(b) expressed that § 87(2)(b) statement regarding PO Torres placing his weight on the backs of his knees was plausible and that such an action was most likely the cause of the injuries.

§ 87(2)(g) § 87(2)(b) PO Torres, § 87(2)(b) testified that § 87(2)(b) ran from him in an apparent attempt to avoid arrest. PO Torres also stated that § 87(2)(b) fell to the ground as he ran towards Riverside Drive. § 87(2)(g) § 87(2)(b) PO Torres stated to CCRB, § 87(2)(g) that § 87(2)(b) when he fell, fell onto his back. In his CCRB statement, PO Torres first stated § 87(2)(b) complied

with his request to put his hands behind his back, putting his hands behind his back. However, PO Torres also stated that, as § 87(2)(b) was lying on his back, that he had to roll § 87(2)(b) over in order to handcuff him. Conversely, PO Torres stated to IAB (after he had listened to his CCRB testimony) that § 87(2)(b) fell face forward to the ground and then rolled himself onto his back as PO Torres approached. PO Torres stated he then rolled § 87(2)(b) over to place handcuffs on him.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified to IAB that he was hit in the right leg with a metal rod or stick. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b). PO Gilkes testified to Inv. Walker that at no time was § 87(2)(b) made to stand at the scene of his arrest (where he complained loudly that his legs were broken). However, PO Gilkes stated to Inv. Dever, who was questioning him regarding the complaint of § 87(2)(b) that when EMS arrived on the scene, § 87(2)(b) was standing up. PO Gilkes stated that EMTs checked § 87(2)(b) legs and stated, “Your legs are in better condition than mine.” At that point, § 87(2)(b) then “fell back down” on the sidewalk. PO Gilkes reported to Inv. Dever that it was at that point that the officers at the scene “figured his legs weren’t broken.”

Sgt. Loretoni testified to IAB that when she arrived at the scene, EMS was already at the scene. She stated that she observed EMTs lift § 87(2)(b) up to a standing position to walk him to the ambulance. Sgt. Loretoni stated that § 87(2)(b) then “lowered” himself to the ground, hitting the ground with his knees. It was at that point that § 87(2)(b) was placed on a gurney by EMS and his pants were cut open in an effort to examine his knees. EMTs reported that § 87(2)(b) knees appeared to be fine. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that police officers at the scene called him a “liar” when he claimed to be injured.

§ 87(2)(a) Gen.Mun. §50-H(3), § 87(2)(b)

§ 87(2)(a) Gen.Mun. §50-H(3) § 87(2)(b) stated to IAB that he did not recall giving an account of how he came to be injured to § 87(2)(b) personnel, and stated that they listened primarily to PO Torres, who told them that he was “fine.” Records from this hospital note that § 87(2)(b) stated he was struck in the back of the knees, causing him to fall forward onto his knees [see encl. 62a-m]. There is no mention of § 87(2)(b) specifically stating that his injury was the result of a police action.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was taken directly to a holding cell. PO Potkay also stated that § 87(2)(b) “sat himself” down on the floor of his holding cell when he was placed inside. PO Potkay stated to CCRB that he could not recall if § 87(2)(b) had been placed in the holding cell unassisted. By all accounts, § 87(2)(b) had fallen to the floor at least two times before being fingerprinted. PO Potkay reported to IAB that § 87(2)(b) had walked approximately 6-7 feet unassisted before falling while being taken to the fingerprinting room. PO Potkay did not mention this to CCRB. He stated that he helped § 87(2)(b) to his feet after this fall and asked him if he wanted to go to the hospital, to which § 87(2)(b) replied, “No, just help me out.” § 87(2)(b) legs then went limp and he fell again. PO Potkay stated to IAB that at one point after § 87(2)(b) had fallen, he stated to PO Potkay, “Just drag me,” to which PO Potkay replied that he would not and helped him up again. PO Potkay did not mention this comment to CCRB.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] § 87(2)(b) [REDACTED]

[REDACTED] § 87(2)(b) [REDACTED] § 87(2)(b)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). Specifically, PO Potkay stated that, as he was under the impression that § 87(2)(b) had only sustained swelling to one knee, he instructed § 87(2)(b) to place his weight on one leg so that he could walk.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

PO Potkay stated to CCRB that he made this statement when it was apparent that § 87(2)(b) was having problems walking or standing up. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). PO Potkay and PO Woods stated that they did not desire to have § 87(2)(b) turned away from Manhattan Central Booking due his being injured, which would mean that they would have to take him to a hospital and then return him to Manhattan Central Booking. § 87(2)(b) stated to CCRB that his legs were in so much pain at that point that he was weeping.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that he received no medical attention, and that the only assistance he received at Manhattan Central Booking was from an inmate who helped him to use a holding cell toilet, and from a Corrections officer that wheeled him into the court room on a rolling office chair after § 87(2)(b) fell trying to walk on a cane that he had been given.

§ 87(2)(b), § 87(2)(g)

PO Potkay even characterized § 87(2)(b) as being relatively affable, and thanking him for helping him to walk.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegations

A) Force: PO Eric Torres used his nightstick as a club against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated specifically that he was struck with some sort of metal rod or stick. His characterization of the weapon is consistent with a retractable asp baton. § 87(2)(b), § 87(2)(g)

B) Force: PO Eric Torres used physical force against § 87(2)(b)

All parties agree that § 87(2)(b) received his injuries during his arrest. § 87(2)(b) claims that at one point PO Torres pressed his knees into the backs of § 87(2)(b) knees while he was handcuffing him, and that when § 87(2)(b) cried out in pain, he applied more pressure. A third party witness interviewed by IAB, § 87(2)(b) testified that he observed the officers “take” § 87(2)(b) to the ground and that an officer knelt on top of him in this way for approximately 10 minutes. PO Torres denied that he ever took this action against § 87(2)(b). He stated to CCRB, § 87(2)(g) that when § 87(2)(b) fell to ground he fell onto his back, and that he turned § 87(2)(b) over to be handcuffed while he knelt beside him. He stated to IAB that § 87(2)(b) fell face forward and then rolled himself over onto his back when he approached. PO Torres then rolled § 87(2)(b) over to handcuff him while kneeling beside him. According to PO Torres’ statements, § 87(2)(b) must somehow have ruptured him patellar tendons while running. However, § 87(2)(b) of § 87(2)(b) stated to IAB that § 87(2)(b) injuries were unusual, and that for both patellar tendons to have ruptured at the same time, a certain amount of weight must be placed on them, which would cause them to “hyper flex” or extend to the point that they would rupture. § 87(2)(b) stated that what most likely caused § 87(2)(b) injuries was someone falling or positioning themselves on top of his knees. § 87(2)(b), § 87(2)(g)

C) Abuse of Authority: PO John Potkay refused to provide medical attention for § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Patrol Guide procedure 210-04 states specifically that a Medical Treatment of Prisoner form is to be prepared for each prisoner who “refuses treatment after claiming injury or illness or is in apparent need of treatment...or has previously treated injuries.” § 87(2)(b), § 87(2)(g)

D) Force: PO John Potkay used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) of § 87(2)(b) stated that § 87(2)(b) patellar tendons may not have been completely ruptured at the scene of his arrest, but that his subsequent falling from a standing position may have caused the complete ruptures. § 87(2)(b), § 87(2)(g)

E) Discourtesy: PO John Potkay spoke discourteously to § 87(2)(b)

§ 87(2)(b) reported that PO Potkay stated, prior to PO Potkay dragging him in the 30th Pct stationhouse, “I’m sick of this shit.” § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: